App. F. IX-4

Previous References 1939. File No. 29-3

Legi 20-39 (1-6) (7-8) ( ) Legis Serial Nos. 1

Later References.

PRESERVED

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. One only

Part ~~B~~ A for December 1939

SUBJECT.

The Defence of India Act, 1939, as applied to Mysore

WD 0573—GPB—22,500—12-9-39

B B Shankaranarayana
29.4.40

REGISTERED No. L. 3131.

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The Gazette of India

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PUBLISHED BY AUTHORITY.

NEW DELHI, TUESDAY, NOVEMBER 14, 1939.

GOVERNMENT OF INDIA.

POLITICAL DEPARTMENT.

NOTIFICATIONS.

New Delhi, the 14th November 1939.

No. 37-W.—In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1937, and of all other powers enabling him in that behalf, and in supersession of the notification of the Political Department, No. 21-W., dated the 19th September 1939, the Crown Representative is pleased to apply to the Gilgit Sub-Division, the Defence of India Act, 1939 (XXXV of 1939), subject to any amendments to which the said Act is for the time being subject in British India, and to the modifications specified in the Schedule hereto annexed:

Provided that any Court or authority may construe the provisions of the said Act as so applied, and of any rules, notifications, orders, directions or regulations made or issued thereunder, with such modifications not affecting the substance as may be necessary or proper to adapt them to the matter before that Court or authority.

Schedul

1. Save where the context otherwise requires,—

(*i*) references to the Central Government shall be construed as references to the Crown Representative;

(*ii*) references to the Provincial Government shall be construed as references to the Resident in Kashmir;

(*iii*) references to the defence of British India shall be construed as including references to the defence of the said Sub-Division

(*iv*) references to British India (otherwise than in the expression "defence of British India") or to a Province of British India shall be construed as references to the said Sub-Division;

(*v*) references to His Majesty's subjects or British subjects shall be construed as references to all persons in the said Sub-Division; and

(*vi*) references to any Act shall be construed as references to that Act as applied to, or to the analogous law in force in, the said Sub-Division.

[*Price 1 anna.*]

2. Sub-section (*2*) of section 4, ıuse (*iv*) of sub-section (*3*) and clause ı and (*c*) of sub-section (*4*) of sectio section 4, sub-section (*5*) of section 6 ;tion 7, clause (*f*) of sub-section (*1* section 19 and section 20 shall b ıitted.

3. For sub-section (*3*) of section ; following sub-section shall be sub uted, namely :-

"(3) It shall come into force ; once: Provided that the pr visions of chapter III sh not come into force until su date as the Crown Repre sentative may, by notificatio in the official Gazette, appoin in this behalf.'

4. For clause (*b*) of sub-section (section 19, the following claus ıll be substituted, namely :

"(*b*) Where no such agreement ca be reached, the Crown Repre sentative shall appoint a arbitrator such person as h thinks fi''

No. 38-W.—In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1937, and of all other powers enabling him in that behalf, and in supersession of the notification of the Political Department No. 5-W., dated the 3rd September 1939, the Crown Representative is pleased to apply to the areas in Indian States specified in the First Schedule hereto annexed (hereinafter referred to as the Administered Areas), the Defence of India Act, 1939 (XXXV of 1939), subject to any amendments to which the said Act is for the time being subject in British India, and subject to the modifications specified in the Second chedule :

Provided that any Court or Authority ıay construe the provisions of the said ıct as so applied, and of any rules, otifications, orders, directions or egulations made or issued thereunder, ith such modifications not affecting the ıbstance as may be necessary or proper) adapt them to the matter before that ourt or Authority.

1. the Western India States Adminis ered Areas (Application of Laws rder, 1937.

3. The administered areas in the Cen al India Agency specified in th entral India Administered Area Application of Laws) Order, 1937.

The Gwalior Residency Area.

The District of Abu.

The administered areas in th yderabad State specified in th Hyderabad Administered Areas (Appli cation of Laws) Order, 1937

7. The Civil and Military Station o Bangalore.

8. The Kolhapur Residency Area an he Wadi Jaghir.

9. The railway lands in the Weste India States Agency specified in th notifications of the Political Depart nent, Nos. 189-I. B. and 190-I. B. lated the 8th September 1937.

10. The Rajputana and Central Indi railway lands specified in the Rajputan and Central India Railway Land (Application of Laws) Order, 1937

11. The Punjab States railway land specified in the Punjab States Railwa Lands (Application of Laws) Orde 1939.

12. The Thana Circles in the Gujara States Agency and the Dangs.

Second Schedule

1. Save where the context otherwis requires—

references to the Central Gov ernment shall be construed a references to the Crown Repre sentative,

references to the Provincia Government shall be construe as references to the Resident who exercises jurisdiction in the Administered Area con cerned;

references to the defence of British India shall be con strued as including reference to the defence of the Administered Areas,

references to British India

(*v*) references to His Majesty's subjects or British subjects shall be construed as references to all persons in the Administered Areas, and

(*vi*) references to any Act shall be construed as references to that Act, as applied to, or to the analogous law in force in, the Administered Area concerned.

2. Sub-section (2) of section 1, clause (*iv*) of sub-section (3) and clauses (*b*) and (*c*) of sub-section (4) of section 2, section 4, sub-section (5) of section 6, section 7, clause (*f*) of sub-section (1) of section 19 and section 20 shall be omitted.

3. For sub-section (3) of section 1, the following sub-section shall be substituted, namely:—

"(3) It shall come into force at once: Provided that the provisions of Chapter III shall not come into force in any area until such date as the Crown Representative may, by notification in the official Gazette, appoint in this behalf."

4. For clause (*b*) of sub-section (1) of section 19, the following clause shall be substituted, namely:—

"(*b*) Where no such agreement can be reached, the Crown Representative shall appoint as arbitrator such person as he thinks fit."

No. 39-W.—In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1937, and of all other powers enabling him in that behalf, and in supersession of the notification of the Political Department, No. 7-W., dated the 3rd September 1939, the Crown Representative is pleased to apply to the British Reserve in Manipur, the Defence of India Act, 1939 (XXXV of 1939), subject to any amendments to which the said Act is for the time being subject in British India, and subject to the modifications specified in the Schedule hereto annexed:

Provided that any Court of Authority may construe the provisions of the said Act as so applied, and of any rules, notifications, orders, directions or regulations made or issued thereunder, with such modifications not affecting the substance as may be necessary or proper to adapt them to the matter before that Court or Authority.

Schedule.

1. Save where the context otherwise requires—

(i) references to the Central Government shall be construed as references to the Crown Representative,

(ii) references to the Provincial Government shall be construed as references to the Governor of Assam,

(iii) references to the defence of British India shall be construed as including references to the defence of the British Reserve in Manipur,

(iv) references to British India (otherwise than in the expression "defence of British India") or to a Province of British India shall be construed as references to the said British reserve,

(v) references to His Majesty's subjects or British subjects shall be construed as references to all persons in the said British reserve, and

(vi) references to any Act shall be construed as references to that Act, as applied to, or to the analogous law in force in, the said British reserve.

2. Sub-section (2) of section 1, clause (*iv*) of sub-section (3) and clauses (*b*) and (*c*) of sub-section (4) of section 2, section 4, sub-section (5) of section 6, section 7, clause (*f*) of sub-section (1) of section 19 and section 20 shall be omitted.

3. For sub-section (3) of section 1, the following sub-section shall be substituted, namely:—

"(3) It shall come into force at once: Provided that the provisions of Chapter III shall not come into force until such date as the Crown Representative may, by notification in the official Gazette, appoint in this behalf"

4. For clause (*b*) of sub-section (1) of section 19, the following clause shall be substituted, namely:—

'(*b*) Where no such agreement can be reached, the Crown Representative shall appoint as arbitrator such person as he thinks fit'.

No. 40-W.—In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1937, and of all other powers enabling him in that behalf, and in supersession of the notification of the Political Department, No. 9-W., dated the 3rd September 1939, the Crown Representative is pleased to direct that the Defence of India Act, 1939 (XXXV of 1939), shall apply to the Khasi States, including the Shillong Administered Areas, in so far as the same may be applicable, and subject to any amendments to which the said Act is for the time being subject in Assam, and subject to the modifications specified in the Schedule hereto annexed:

Provided that the provisions of Chapter III of the said Act shall not come into force until such date as the Crown Representative may, by notification in the official Gazette, appoint in this behalf:

Provided, further, that for the purpose of facilitating the application of the said Act any Court or Authority may construe the provisions thereof with such alterations not affecting the substance as may be necessary or proper to adapt them to the matter before that Court or Authority.

Schedule.

Save where the context otherwise requires—

(i) references to the Central Government shall be construed as references to the Crown Representative,

(ii) references to the Provincial Government shall be construed as references to the Governor of Assam,

(iii) references to the defence of British India shall be construed as including references to the defence of the Khasi States, including the Shillong Administered Areas,

references to British India (otherwise than in the expression "defence of British India") or to a Province of British India shall be construed as references to the Khasi States, including the Shillong Administered Areas, and

references to His Majesty's subjects or British subjects shall be construed as references to all persons in the Khasi States, including the Shillong Administered Areas.

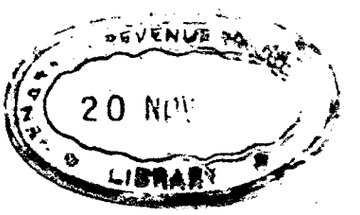
No. 41-W.—In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1937, and of all other powers enabling him in that behalf, the Crown Representative is pleased to direct that the following further amendment shall be made in the notification of the Government of India in the late Foreign Department, No. 260-I. B., dated the 10th February 1913, namely:—

In the First Schedule annexed to the said notification, for the entry "The Defence of India Ordinance, 1939 (Ordinance No. V of 1939), together with any rules thereunder for the time being in force in British India" the following entry shall be substituted, namely:-

'The Defence of India Act, 1939 (XXXV of 1939), together with any rules thereunder for the time being in force in British India. Provided that the provisions of Chapter III of the said Act shall not come into force in the said territories until such date as the Crown Representative may by notification in the official Gazette appoint in this behalf"

C. LATIMER,

Secretary to His Excellency the Crown Representative.



The Gazette of India

EXTRAORDINARY

PUBLISHED BY AUTHORITY.

NEW DELHI, TUESDAY, NOVEMBER 14, 1939.

GOVERNMENT OF INDIA.

EXTERNAL AFFAIRS DEPARTMENT.

NOTIFICATIONS.

New Delhi, the 14th November 1939.

No. 23-W.—In exercise of the powers conferred by sub-sections (1) and (2) of section 313 of the Government of India Act, 1935, and of all other powers enabling him in that behalf, and in supersession of the notification of the Government of India in the External Affairs Department, No. 7-W., dated the 3rd September, 1939, the Governor-General in Council is pleased to direct that the Defence of India Act, 1939 (XXXV of 1939) and the Defence of India Rules (hereinafter referred to as the said Act and the said Rules respectively), shall apply to the tribal areas beyond the western and northern boundaries of the North-West Frontier Province in so far as the same may be applicable and subject to any amendments to which they are for the time being subject in British India:

Provided that—

(1) Chapter III of the said Act shall not come into force in the said areas until such date as the Governor General in Council may by notification in the official Gazette appoint in this behalf:

(2) all references in the said Act and in the said Rules to the Provincial Government shall be construed as references to the Agent to the Governor General exercising jurisdiction in the tribal areas:

(3) any Court or authority may construe the provisions of the said Act and of the said Rules with such modifications not affecting the substance as may be necessary or proper to adapt them to the matter before the Court or authority.

No. 24-W.—In exercise of the powers conferred by sub-sections (1) and (2) of section 313 of the Government of India Act, 1935, and of all other powers

[*Price 1 anna.*]

enabling him in that behalf, and in supersession of the notification of the Government of India in the External Affairs Department, No. 10-W., dated the 3rd September, 1939, the Governor General in Council is pleased to direct that the Defence of India Act, 1939 (XXXV of 1939) and the Defence of India Rules (hereinafter referred to as the said Act and the said Rules respectively), shall apply to such of the Baluch tribal areas beyond the Western border of the Dera Ghazi Khan District of the Punjab as are not included in the Baluchistan tribal areas, in so far as the same may be applicable and subject to any amendments to which they are for the time being subject in British India :

Provided that–

Chapter III of the said Act shall not come into force in the said areas until such date as the Governor General in Council may by notification in the official Gazette appoint in this behalf :

all references in the said Act and in the said Rules to the Provincial Government shall be construed as references to the Agent to the Governor General exercising jurisdiction in the tribal areas :

(3) any Court or authority may construe the provisions of the said Act and of the said Rules with such modifications not affecting the substance as may be necessary or proper to adapt them to the matter before the Court or authority.

No. 25-W.—In pursuance of sub-section (2) of section 95 of the Government of India Act, 1935, and in supersession of the notifications of the Government of India in the External Affairs Department, No. 11-W., dated the 3rd September 1939, in so far as it relates to the Defence of India Ordinance, 1939, and No. 18-W., dated the 2nd October 1939, the Governor General, in his discretion, is pleased to direct that the Defence of India Act, 1939 (XXXV of 1939), shall apply to British Baluchistan subject to the following modification, namely :

For sub-section (3) of section 1, the following sub-section shall be substituted, namely :—

Chapter III shall come into force on such date as the Governor-General in his discretion may by notification in the official Gazette appoint in this behalf."

O. K. CAROE

Secretary to the Government of

Act No. of 1939.

The Defence of India Act, 1939, as applied to Mysore.

WHEREAS an emergency has arisen which makes it expedient to enforce in Mysore the provisions of the Defence of India Act, 1939 (Act No.XXXV of 1939),

~~Now therefore, in exercise of the powers in~~ His Highness the Maharaja is pleased to enact ~~It is hereby enacted~~ as follows:-

1. The Defence of India Act, 1939(hereinafter referred to as the said Act), shall mutatis mutandis be enforced in Mysore as long as and to the same extent as the said Act is in force in British India.

2. It shall apply to all subjects of the State whether resident in or out of Mysore and to all persons resident within the State.

3. The said Act shall apply subject to the modifications specified in the Schedule hereto annexed.

4. The following Acts of the Central Legislature of British India shall be enforced in Mysore mutatis mutandis so long as the said Act is in force and subject ~~xxx~~ to the modifications specified in clause 1 of the Schedule:-

(1) The Indian Official Secrets Act, 1923 (Act No.XIX of 1923).

(2) The Indian Explosive Substances Act, 1908(Act No. VI of 1908)

(3) The Dramatic Performances Act, 1876 (Act No.XIX of 1876).

(4) The Indian Aircraft Act, 1934 (Act No.XXII of 1934).

5. Where any Rules issued by the Central Government of India under the said Act or under the Acts specified in section 4 are expressed to be applied or extended ~~xxxxxxxxxxxxxxxxxxx~~ mutatis mutandis then unless a different intention appears from the context, section 3

of the General Clauses Act, 1899 (Act No.III of 1899) and the modifications specified in the Scheaule to this Act shall apply.

6. Any Court may construe the provisions of the sai Act and of any Notifications, Orders, directions or regulations made or issued thereunder with such modifications not affecting the substance as may be necessary or proper to adapt them to the matter before the Court.

8. Any Rules made, anything done and any action take in exercise of any power conferred by or under the Defenc of India Ordinance, as applied to Mysore (Act No.XXIII of 1939) shall be deemed to have been made, done or taken in exercise of powers conferred by or under this Act as if this Act had commenced on the 4th day of September 1939, and notwithstanding that the Defence of India Ordinance (as applied to Mysore, by virtue of) shall be deemed to have been in force not in force in British India after the 14th day of November 1939.

SCHEDULE.

List of modifications. (to the date of coming into force of this Act)

1. Save where the context otherwise requires -

(a) reference to the Central Government, a Provincial Government, the appropriate Government or Government shall be construed as references to the Government of His Highness the Maharaja of Mysore;

(b) references to the defence of British India shall be construed as including references to the defence of Mysore State;

(c) reference to British India (otherwise than in the expression "defence of British India") and to a Province of British India shall be construed as reference to the State of Mysore; and,

(d) references to matters in an Act of the Central Legislature of British India shall be construed,-

(i) where there is no corresponding Mysore Act, then as if those matters applied to Mysore, and

(ii) where there is a corresponding Mysore Act, then as if the references were to corresponding matters, if any, of the Mysore Act.

2. Clauses (a) and (b) of sub-section (2) of section 1 of the said Act shall be omitted.

3. In clause (iii) of sub-section (2) of section 2 of the said Act, after the words, " His Majesty" the words " or His Highness the Maharaja" shall be added.

(2) In clause (v) of sub-section (2) of section 2 of the said Act, after the words "His Majesty's" where it occurs for the second time, the words "or His Highness" shall be added.

(1) For sub-section (3) of the said Act, the following sub-section shall be substituted, namely:—

4. In sub-section (1) of section 5 of the said Act, after the words "His Majesty" where it occurs for the first time, the words "or His Highness" shall be added.

5. For sub-clause (e) of sub-section (4) of section 6 of the said Act, the following shall be substituted, namely :-

"(e) sections 9, 14, 15 and 20 and sub-section (2) of section 19 had been omitted; and"

6. For section 8 of the said Act the following section shall be substituted, namely:-

"8. The Government of His Highness the Maharaja may, for the whole or any part of Mysore, constitute Special Tribunals consisting of one or more members."

7. Any reference to Forces of His Majesty shall be deemed to include reference to the State Forces.

8. (Section 5 of Act XXV of 1939 will be inserted as clause 8, if approved.)

Act No. of 1939.

The Defence of India Act, 1939, as applied to Mysore.

WHEREAS an emergency has arisen which makes it expedient to enforce in Mysore the provisions of the Defence of India Act, 1939 (Act No.XXXV of 1939),

Now therefore,

It is hereby enacted as follows:-

1. The Defence of India Act, 1939(hereinafter referred to as the said Act), shall mutatis mutandis be enforced in Mysore as long as and to the same extent as the said Act is in force in British India.

2. It shall apply to all subjects of the State whether resident in or out of Mysore and to all persons resident within the State.

3. The said Act shall apply subject to the modifications specified in the Schedule hereto annexed.

4. The following Acts of the Central Legislature of British India shall be enforced in Mysore mutatis mutandis so long as the said Act is in force and subject ~~xxx~~ to the modifications specified in clause 1 of the Schedule:-

(1) The Indian Official Secrets Act, 1923 (Act No.XIX of 1923).

(2) The Indian Explosive Substances Act, 1908(Act No. VI of 1908)

(3) The Dramatic Performances Act, 1876 (Act No.XIX of 1876).

(4) The Indian Aircraft Act, 1934 (Act No.XXII of 1934).

5. Where any Rules issued by the Central Government of India under the said Act or under the Acts specified in section 4 are expressed to be applied or extended ~~xxxxxxxxxxxxxxxxxx~~ mutatis mutandis then unless a different intention appears from the context, section 31

of the General Clauses Act, 1899 (Act No.III of 1899) and the modifications specified in the Schedule to this Act shall apply.

6. Any Court may construe the provisions of the said Act and of any Notifications, Orders, directions or regulations made or issued thereunder with such modifications not affecting the substance as may be necessary or proper to adapt them to the matter before the Court.

(7). Savings clause.

SCHEDULE.

List of modifications.

1. Save where the context otherwise requires -

(a) reference to the Central Government, a Provincial Government, the appropriate Government or Government shall be construed as references to the Government of His Highness the Maharaja of Mysore;

(b) references to the defence of British India shall be construed as including references to the defence of Mysore State;

(c) reference to British India (otherwise than in the expression "defence of British India") and to a Province of British India shall be construed as references to the State of Mysore; and

(d) references to matters in an Act of the Central Legislature of British India shall be construed,-

(i) where there is no corresponding Mysore Act, then as if those matters applied to Mysore, and

(ii) where there is a corresponding Mysore Act, then as if the references were to corresponding matters, if any, of the Mysore Act.

2. Clauses (a) and (b) of sub-section (2) of section 1 of the said Act shall be omitted.

3.(1) In clause (iii) of sub-section (2) of section 2 of the said Act, after the words, " His Majesty" the words " or His Highness the Maharaja" shall be added.

(2) In clause (v) of sub-section (2) of section 2 of the said Act, after the words "His Majesty's" where it occurs for the second time, the words "or His Highness shall be added.

4. In sub-section (1) of section 5 of the said Act, after the words "His Majesty" where it occurs for the first time, the words "or His Highness" shall be added

5. For sub-clause (e) of sub-section (4) of section of the said Act, the following shall be substituted, namely :-

"(e) sections 9,15 and 20 and sub-section (2) of section 19 had been omitted; and"

6. For section 8 of the said Act the following section shall be substituted, namely:-

"8. The Government of His Highness the Maharaja may, for the whole or any part of Mysore, constitute Special Tribunals consisting of one or more members."

7. Any reference to Forces of His Majesty shall be deemed to include reference to the State Forces.

8.

(Section 3 of Act XXV of 1939 will be inserted as clause 8, if approved.)

Serial No.

From

The Secretary to the Hnble the Resident

No F 59-39/W dated 24.11.39

forwards copies of the Defence of India Act and requesting this Government to apply the Act to the State.

By Emergency Act XXIII of 1939, the Defence of India Ordinance was applied to Mysore mutatis mutandis as long as and to the same extent as the Ordinance was in force in British India (section 1 of Act).

By the Defence of India Act (XXXV of 1939), the Defence of India Ordinance has been repealed (section 21 of Act). This section (in Chapter IV of the Act) has been notified as coming into force from the 14th November 1939.

At present therefore Act XXIII of 1939 has got spent and it is necessary to promulgate into law a fresh measure applying the Defence of India Act. This Act is a permanent measure and under 1 (4) will be in force during the continuation of the present war and for a further period of six months thereafter.

A Draft Bill applying the Defence of India Act to Mysore during the period of its existence in British India and incorporating the required changes in a Schedule has been put up.

The Defence of India Rules of British India which were also applied to Mysore have been kept alive by section 21 of the British Indian Act. Here also the

File No.

General and Revenue Secretariat.

Serial No.

Rules may be kept alive by a similar provision which has been drafted and incorporated as clause 7 of the Bill. In this clause a further provision has been added (last clause) validating any action taken after the 14th November when the Act got spent

Submitted for orders.

28/11/39

Chapters II and IV of the Defence of India Act have been put into force from 14th November 1939. Section 21 which is in Chapter IV repeals the Defence of India Ordinance so that the Ordinance ceases from 14th November

Section 1 of our Ordinance is to the effect that will be in force as long as the Ordinance is in force in British India and it therefore ceases to be operat from 14th November.

It is therefore necessary to promulgate an Act immediately applying the British Indian Act mutatis mutandis . It has to be promulgated under Section 16 of the Legislative Council Act,

Since the principal matters concerned in this Act deal with the relations with the paramount power and are matters governed by treaties and conventions, the are excluded from the cognizance of the Legislative Council. But there are a few other matters dealing which internal security, public safety or interest could be

3397/p.

Defence of India Act - applin to Burma

Serial No.

taken cognizance of by the Legislative Council. Consequently it is proper to invoke the aid of Section of the Legislative Council Act instead of Section 10

3576

Since the Ordinance ceases to be in operation fr 14th November, a clause has been added (clause 7) extending the operation of the Ordinance till the date when of this Bill comes into force.

OFFICE OF THE
NOV 29 1939
5955

Draft of Act incorporating all the amendments in the Indian Act is below

1st Member)

Secretary)

29/11

29/11/39

29-11-39

2nd Member

Returned with minutes.

Secretary). 3 1/12/39

1-12-39

1/12/39 3 2/12/39

3·12 —

3 4/12

3857
OFFICE OF THE
SECOND MEMBER OF COUNCIL
7 DEC. 1939
4677

Defence of India Act - applⁿ for purpose

File No. 3394/D of 19

General and Revenue Secretariat.

Serial No.

A. D. J. R. to put up for orders.

Sd/ 4.12.39 Dowd

Secy) 3/4/14

3904 PT. 39 SECRETARIAT BANGALORE

Dr Secy) 6/4/12

signed J. N. placed in pkt. 3/4/14

6/12

S. N. submitted

Dewan) 6-4-12

BKR 6.12

FIN... DEC 5 1939 No 5347

DRAFT FINAL NOTE.

Subject.- Promulgation of an Act to apply the Defence of India Act to Mysore.

On the 4th September 1939, Emergency Act No.XXIII of 1939 was passed applying to Mysore the Defence of India Ordinance, 1939, as long as and to the same extent as the Ordinance was in force in British India. By Section 21 of th Defence of India Act which was recently passed by the Indian Legislature, this Ordinance is repealed; the repeal taking effect from the 1 November 1939. There is therefore no Defence of India Ordinance in force in Mysore now.

The Residency have in their letter of the 24th November 1939 requested that the Defence of India Act may, with suitable modifications be enforced in Mysore.

Since some of the principal matters deal with by this Act are excluded from the cognizance of the Legislative Council by section 10 of the Legislative Council Act, whilst certain other matters are not so excluded, it is proposed to promulgate into law under section 16 of the Legislative Counci Act, a measure applying the Defence of India Act to Mysore.

The Dewan and the Second Member of Council are agreeable to this proposal.

The gracious assent of His Highness to promulgate such a measure into law under section 16 of the Legislative Council Act, is solicited.

MEMBER OF COUNCIL.

4/12/39

Final Note by the First Member of Council.

Subject.—

Promulgation of an Act to apply the Defence of India Act to Mysore.

On the 4th September 1939, Emergency Act No. XXIII of 1939 was passed applying to Mysore the Defence of India Ordinance, 1939, as long as and to the same extent as the Ordinance was in force in British India. By Section 21 of the Defence of India Act which was recently passed by the Indian Legislature, this Ordinance is repealed; the repeal taking effect from the 14th November 1939. There is therefore no Defence of India Ordinance in force in Mysore now.

The Residency have in their letter of the 24th November 1939 requested that the Defence of India Act may, with suitable modifications, be enforced in Mysore.

Since some of the principal matters dealt with by this Act are excluded from the cognizance of the Legislative Council by section 10 of the Legislative Council Act, whilst certain other matters are not so excluded, it is proposed to promulgate into law under section 16 of the Legislative Council Act, a measure applying the Defence of India Act to Mysore.

The Dewan and the Second Member of Council are agreeable to this proposal. The gracious assent of His Highness to promulgate such a measure into law under section 16 of the Legislative Council Act, is solicited.

N. Madhava Rau

MEMBER OF COUNCIL.

Bangalore,
5th December 1939.

Submitted to His Highness.

I submit herewith a Final Note by the First *Member of Council* on the subject of Promulgation of an Act to apply the Defence of India Act to Mysore,

.....

for His Highness' gracious approval.

Mirza M. Ismail

Dewan.

7-12-39

Record of Cases submitted for the Orders of

His Highness the Maharaja.

Subject.

Promulgation of an Act to apply the Defence of India Act to Mysore.

Order.

~~KRW~~

9/12/39

H. H. 362

General and Revenue
Secretariat.

SUBJECT:—

Promulgation of an Act to apply the Defence of India Act to Mysore.

(*)

31. All urgent or confidential files returned with His Highness' orders may, in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Headquarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to Members of Council for perusal of His Highness' orders before/after issue of orders. (*Vide* *Rules 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

Chief Secretary to Government.

Through the Secretary to Government,

.....Law.....Department.

FJR
11.12.39

FIRST MEMBER OF COUNCIL.

12/12/39

SECOND MEMBER OF COUNCIL (on deputation)

Law Secy with Compliments.

12.12.39

WD 04642—GPB—500—23-10-39

12/12

Defence of India Act – applⁿ to Mysore

General and Revenue Secretariat. | Legs File No. 29 of 1939 | [App. F. III-2

Serial No.	
	on 9.12.3
	The gracious assent of His Highness was accorded to promulgate the measure into law.
	A draft Notfn. publishing the Act as Act no. XXVI of 1939 is put up for orders.
	Sd/- 12.12.39
	Issued P 4120 Legs 29-39-1 dated 13.12.39 publishing the Act as Act no XXVI of 1939

3397/39

No.F.59-39/W. Dated Bangalore, the 24th November 1939.

OFFICE OF THE
FIRST LEGISLATIVE COUNCIL
NOV 24 1939
No. 4971

Dol. 937

From

The Secretary to the Hon'ble the Resident in Mysore.

To

The Chief Secretary to the Government of
His Highness the Maharaja of Mysore, Bangalore.

24 NOV 1939
GOVT. OF MYSORE

The Defence of India Act, 1939
(XXXV of 1939).

Sir,

I am directed to invite the attention of the Government of Mysore to the Defence of India Act, 1939, which received the assent of the Governor General on the 29th September 1939 and was published in the Gazette of India dated the 30th September 1939. Five copies of the Act are sent herewith.

2. The Act, as will be seen from section 21 thereof, supersedes the Defence of India Ordinance, 1939, the provisions of which, with certain exceptions noted below, it reproduces. Chapter I of the Act came into force in British India on the 29th September 1939, and Chapters II and IV were brought into force throughout British India with effect from the 14th November 1939. As regards Chapter III of the Act, the intention of the Central Government is to extend its provisions only to specified areas as and when the necessity for setting up Special Tribunals in those areas arises. I enclose in this connection extracts from a letter from the Government of India, Defence Co-ordination Department to Provincial Governments and Chief Commissioners, No.264-OR/39-G.G.(D.C.), dated the 3rd November 1939.

3. Various important amendments were accepted by Government during the passage of the Act through the Central Legislature, and there are therefore certain differences between the Act and the Ordinance which require to be carefully noticed. Particular attention is accordingly invited to the following sections of the Act :-

Sections 2(2), 2(3)(viii). Some anxiety was expressed in the Central Legislature regarding the conferring of powers on "persons" who might not be subject to the executive authority of Government. To meet this objection, the words "or person where they occur in sections 2(2) and 2(3)(viii) of the Ordinance, were omitted.

Section 2(2)(iii). An insertion has been made which follows the sense of Exception 2 in section 2 of the Criminal Law Amendment Act, 1938. It should be borne in mind when construing Defence of India Rule 34(6)(d), read with Rule 38.

Sections 2(2)(iv)(b),2(2)(v). In each case the words "without lawful authority or excuse" have been inserted.

Section 2(2)(v). Explanation. The limitation here introduced is analogous to the Explanation in section 153A of the Indian Penal Code.

Section 2(2)(x). The words "or association" after "hostile origin" have been omitted as unnecessary.

Section 2(2)(xx). The clause has been expanded so as to confer certain additional powers which might appear to be necessary.

Section 2(2)(xxxi). The scope of the clause has been defined with greater particularity.

Section

Section 2(3)(i). The words "or reasonably suspected of contravening" have been omitted as unnecessary.

Section 2(3)(vii). Words have been inserted on the lines e.g. of the Exception in section 136 of the Indian Penal Code.

Section 2(4)(c). This has been introduced to cover delegation, if required, to such bodies as Port Trusts, or Banks which may not technically be subordinate authorities.

Section 2(5). The last part has been remodelled for the sake of clarity.

Section 8(3). The changes made with a view to securing a predominantly judicial composition of Special Tribunals should be noted.

Section 9. The extending of the jurisdiction of Special Tribunals over all offences, whether of a special character or not, was criticised; hence the limitation.

Section 10(2). The effect is that evidence must be recorded at length in trials of offences punishable with death or transportation for life. This covers all cases in which an appeal now lies under section 13(2) of the Act.

Section 10(5). The insertion at the beginning of the sub-section is designed to preclude the possibility of an accused person being withheld from the Tribunal by an interested prosecuting agency.

Section 10(7). Sub-clause (iii) of the corresponding sub-section of the Ordinance has been omitted as superfluous.

Section 13(2). A right of appeal has been provided in certain cases.

4. It remains to consider section 21 of the Act. As stated above, the provisions of the Act correspond in general very closely with those of the superseded Ordinance, and it has therefore been possible to provide that any rules made, anything done and any action taken in exercise of any power conferred by or under the Ordinance shall be deemed to have been made, done or taken in exercise of powers conferred by or under the Act as if the Act had commenced on the 3rd September 1939, that is, on the day on which the Ordinance was promulgated. The effect is that the Defence of India Rules will remain in force as if made under section 2 of the Act, and will not require to be republished.

An amendment of the Rules has been published - substituting "section 19 of the Defence of India Act, 1939," for "section 18 of the Ordinance" throughout the Rules. Other references to the Ordinance will remain unchanged.

5. The provisions of Chapters I, II and IV of the Act have been applied to the administered areas. A copy of the - Political Department's notification dated the 14th November 1939 is enclosed. His Excellency the Crown Representative would be grateful if the Government of Mysore would take - corresponding action in the State. I request you to send, as urgently as possible, six copies of the Mysore Government's notification applying the required provisions of the Act to the State.

I have the honour to be,
Sir,
Your most obedient servant,

SECRETARY TO THE RESIDENT.

Extract from letter from the Government of India, Defence Co-ordination Department, to all Chief Secretaries and Chief Commissioners, No.264-OR/39-G.G(D.C.), dated the 3rd November 1939.

Subject Chapter III of the Defence of India Act.

I am directed to invite your attention to sub-section (3) of section 1 of the Defence of India Act, 1939, as published in the Gazette of India dated September 30th 1939.

* *

3. As regards Chapter III of the Act, I am to make the following observations.

4. During the debate on the Defence of India Bill in the Council of State, the following amendment was proposed by the Hon'ble Mr. P.N. Sapru; "That in part (i) of sub-clause (2) (b) of clause 8 all the words after the words 'Additional Sessions Judge' be omitted." The discussions on this amendment made it clear that it was desired not only to secure the omissions specified in this amendment, but also to delete part (ii) of sub-clause (2)(b) of clause 8, with the object of securing that all members of a Special Tribunal should be qualified by exclusively judicial qualifications.

5. Government did not find themselves able to accept a statutory limitation on the lines proposed, but at the close of the debate on the amendment an assurance was given by the Honourable Mr. A. de C. Williams in the following terms: "As I said before, in the Assembly the Government accepted an amendment of the commencement clause of the Bill which enables them to bring various provisions of the Bill into force at various times, and I can say straightaway that it is not the intention of the Central Government to bring Chapter III of the Act into force until it is definitely called for, and then only in the area for which it is called for. Further, so far

as this particular amendment is concerned, the Central Gover-ment are quite prepared to address Provincial Governments and suggest to them that so far as possible all the members of a Special Tribunal should be either qualified for a High Court Judgeship or be Judges".

6. In view of this assurance, the principles underlying which it is hoped that Provincial Governments will approve, the Central Government do not propose to bring Chapter III into force with the rest of the Act. If any Provincial Government at any time desires to set up a Special Tribunal for any area, the Central Government will of course be prepared to bring Chapter III into force in that area. But the Central Government feel that there is at present no general necessit for the setting up of such Tribunals, and that, since it is the intention, as expressed in section 14 of the Act, that t ordinary criminal and civil courts shall continue to exercis jurisdiction except in abnormal circumstances, it is desirable to avoid giving any ground for apprehension in the minds of the public that the ordinary machinery of justice is to be superseded.

7. With regard to the second part of the assurance given by Mr. Williams, it was made clear by Mr. Williams later in the debate that the last thing the Central Government wished to do was to interfere in any way with the freedom and discretion of Provincial Governments. It might however tend to reassure the public, and possibly to secure better results from the working of Special Tribunals, if the members of such Tribunals were, as far as possible, qualified either as eligible for appointment as High Court Judges, or by reason of judicial, rather than magisterial, experience. The Central Government therefore feel justified in suggesting to Provincial Governments that, in constituting a Special Tribunal, they should wherever possible nominate members possessing judicial experience.

GOVERNMENT OF INDIA.

POLITICAL DEPARTMENT.

NOTIFICATION.

New Delhi, the 14th November 1939.

No.38-W.- In exercise of the powers conferred by the Indi (Foreign ~~xxxx~~ Jurisdiction) Order in Council, 1937, and of all powers enabling him in that behalf, and in supersession of the notification of the Political Department No.5-W, dated the 3rd September 1939, the Crown Representative is pleased to apply tc the areas in Indian States specified in the First Schedule here annexed (hereinafter referred to as the Administered Areas), th Defence of India Act, 1939 (XXXV of 1939), subject to any amend to which the said Act is for the time being subject in British India, and subject to the modifications specified in the Second Schedule:

Provided that any Court or Authority may construe the provisions of the said Act as so applied, and of any rules, not cations, orders, directions or regulations made or issued there under, with such modifications not affecting the substance as m be necessary or proper to adapt them to the matter before that Court or Authority.

First Schedule.

* * *

7. The Civil and Military Station of Bangalore.

* * *

~~Second Schedule~~.

Second Schedule.

1. Save where the context otherwise requires --

(i) references to the Central Government shall be construed as references to the Crown Representative,

(ii) references to the Provincial Government shall be construed as references to the Resident who exercises jurisdiction in the Administered Area concerned,

(iii) references to the defence of British India shall construed as including references to the defence o: the Administered Areas,

(iv) references to British India (otherwise than in t] expression 'defence of British India') or to a Province of British India shall be construed as references to the Administered Are: concerned,

(v) references to His Majesty's subjects or British subjects shall be construed as references to all persons in the Administered Areas, and

(vi) references to any Act shall be construed as refe: to that Act, as applied ~~xx~~ to, or to the analogou: in force in, the Administered Area concerned.

2. Sub-section (2) of section 1, clause (iv) of sub-se((3) and clauses (b) and (c) of sub-section (4) of section : section 4, sub-section (5) of section 6, section 7, clause of sub-section (1) of section 19 and section 20 shall be o:

3. For sub-section (3) of section 1, the following sub-section shall be substituted, namely :-

"(3) It shall come into force at once: Provided that provisions of Chapter III shall not come into for(any area until such date as the Crown Representat: may, by notification in the official Gazette, app(in this behalf."

4. For clause (b) of sub-section (1) of section 19, the following clause shall be substituted, namely :-

"(b) Where no such agreement can be reached, the Cr(Representative shall appoint as arbitrator such person as he thinks fit."

C. LATIMER,

SECRETARY TO HIS EXCELLE:CY T] CROWN REPRESENTATIVE.

23/11/39.

Act No.XXVII of 1939.

(Received the assent of His Highness the Maharaja on the 9th day of December 1939.)

The Defence of India Act, 1939, as applied to Mysor

WHEREAS an emergency has arisen which makes it expedient to enforce in Mysore the provisions of the Defence of India Act, 1939 (Act No.XXXV of 1939),

His Highness the Maharaja is pleased to enact as follows:-

1. The Defence of India Act, 1939 (hereinafter referred to as the said Act), shall mutatis mutandis be enforced in Mysore as long as and to the same extent as the said Act is in force in British India.

2. It shall apply to all subjects of the State whether resident in or out of Mysore and to all persons resident in or out of Mysore and to all persons residen within the State.

3.The said Act shall apply subject to the modifications specified in the Schedule hereto annexed.

4. The following Acts of the Central Legislature of British India shall be enforced in Mysore mutatis mutandis as long as the said Act is in force and subje to the modifications specified in clause 1 of the Schedule:-

(1) The Indian Official Secrets Act, 1923 (Act No.X of 1923).

(2) The Indian Explosive Substances Act, 1908 (Act No.VI of 1908).

(3) The Dramatic Performances Act, 1876 (Act ~~XX~~ No.XIX of 1876).

(4) The Indian Aircraft Act, 1934 (Act No.XXII of 1934).

5. Where any Rules issued by the Central Governme India under the said Act or under the Acts specified Section 4 are expressed to be applied or extended muta mutandis then unless a different intention appears fr

the context, section 31 of the General Clauses Act, 1899 (Act No.III of 1899), and the modifications specified in the Schedule to this Act shall apply.

6. Any Court may construe the provisions of the said Act and of any Notifications, Orders, directions or regulations made or issued thereunder with such modifications not affecting the substance as may be necessary or proper to adapt them to the matter before the Court.

7. Notwithstanding section 1 of the Defence of India Ordinance, 1939, as applied to Mysore, it shall be deemed to have been in force till the date of coming into force of this Act.

8. Any Rules made, anything done and any action taken in exercise of any power conferred by or under the Defence of India Ordinance, as applied to Mysore (Act No.XXIII of 1939) shall be deemed to have been made, done or taken in exercise of powers conferred by or under this Act as if this Act had commenced on the 4th day of September 1939.

SCHEDULE.

List of modifications.

1. Save where the context otherwise requires, -

(a) references to the Central Government, a Provincial Government, the appropriate Government or Government shall be construed as references to the Government of His Highness the Maharaja;

(b) references to the defence of British India shall be construed as including references to the defence of Mysore;

(c) references to ~~the~~ British India (otherwise than in the expression "defence of British India") and to a Province of British India shall be construed as references to Mysore; and

(d) references to matters in an Act of the Central Legislature of British India shall be construed -

(i) where there is no corresponding Mysore Act, then as if those matters applied to Mysore, and

(ii) where there is a corresponding Mysore Act, then as if the references were to corresponding matters, if any, of the Mysore Act.

2.(1) Clauses (a) and (b) of sub-section (2) of section 1 of the said Act shall be omitted.

(2) For sub-section (3) of section 1 of the said Act, the following sub-section shall be substituted, namely:-

"(3) It shall come into force at once; Provided that the provisions of Chapter III shall not come into force until such date as the Government ~~may~~ of His Highness the Maharaja may, by notification in the Official Gazette, appoint in this behalf."

3.(1) In clause (iii) of sub-section (2) of section 2 of the said Act, after the words "His Majesty" the words "or His Highness the Maharaja" shall be added.

(2) In clause (v) of sub-section (2) of section 2 of the said Act, after the words "His Majesty's" where it occurs for the second time, the words " or His Highness' shall be added.

4. In sub-section (1) of section 5 of the said Act, after the words "His Majesty" where it occurs for the first time, the words "or His Highness" shall be added.

5. For sub-clause (e) of sub-section (4) of section 6 of the said Act the following shall be substituted, namely:-

"(e) sections 9,14,15 and 20 and sub-section (2) of section 19 had been omitted; and"

6. For section 8 of the said Act the following section shall be substituted, namely:-

"8. The Government of His Highness the Maharaja

may, for the whole or any part of Mysore, constitute Special Tribunals consisting of one or more members."

7. Any reference to Forces of His Majesty shall be deemed to include reference to State Forces.

8. Ami Art XXV 1939: S 3.

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE.

29-39-1

ORDER No... 4120 Leg's 29-39-1
Encl 3

Dated Bangalore the 12th December 1939.

Ordered that the accompanying Defence of India Act, 1939 as applied to Mysore, which received the assent of His Highness the Maharaja, on the 9th day of December 1939, be published as Act No.XXVI of 1939, in the Mysore Gazette for general information.

Secretary to Government
Law Department.

To

The Compiler, Mysore Gazette for publication in Part IV of the Gazette, in English and Kannada. Clean proofs may be sent to this office before striking off. Copies of the Act to be supplied as per Standing Orders.

cn-2

ACT NO. XXVI OF 1939.

(*Received the assent of His Highness the Maharaja on the 9th day of December* 1939.)

The Defence of India Act, 1939, as applied to Mysore.

Price : 0-1-9.

NOTIFICATION.

No. P. 4120—*Legis.* 29-39-1, *dated Bangalore, the* 13*th December* 1939.

Ordered that the accompanying Defence of India Act, 1939, as applied to Mysore, which received the assent of His Highness the Maharaja, on the 9th day of December 1939, be published as Act No. XXVI of 1939, in the *Mysore Gazette* for general information.

C. SUBRAHMANYA AIYAR,
Secretary to Government,
Law Department.

ACT NO. XXVI OF 1939.

(*Received the assent of His Highness the Maharaja on the 9th day of December* 1939.)

The Defence of India Act, 1939, as applied to Mysore.

WHEREAS an emergency has arisen which makes it expedient to enforce in Mysore the provisions of the Defence of India Act, 1939 (Act No. XXXV of 1939) ;

His Highness the Maharaja is pleased to enact as follows :—

(1) The Defence of India Act, 1939 (hereinafter referred to as the said Act), shall *mutatis mutandis* be enforced in Mysore as long as and to the same extent as the said Act is in force in British India.

2. It shall apply to all subjects of the State whether resident in or out of Mysore and to all persons resident within the State.

3. The said Act shall apply subject to the modifications specified in the Schedule hereto annexed.

4. The following Acts of the Central Legislature of British India shall be enforced in Mysore *mutatis mutandis* as long as the said Act is in force and subject to the modifications specified in clause 1 of the Schedule :—

(1) The Indian Official Secrets Act, 1923 (Act No. XIX of 1923).

(2) The Indian Explosive Substances Act, 1908 (Act No. VI of 1908).

(3) The Dramatic Performances Act, 1876 (Act No. XIX of 1876).

(4) The Indian Aircraft Act, 1934 (Act No. XXII of 1934).

5. Where any Rules issued by the Central Government of India under the said Act or under the Acts specified in section 4 are expressed to be applied or extended *mutatis mutandis* then unless a different intention appears from the context, section 31 of the General Clauses Act, 1899 (Act No. III of 1899), and the modifications specified in the Schedule to this Act shall apply.

6. Any Court may construe the provisions of the said Act and of any notifications, orders, directions or regulations made or issued thereunder with such modifications not affecting the substance as may be necessary or proper to adapt them to the matter before the Court.

7. Notwithstanding section 1 of the Defence of India Ordinance, 1939, as applied to Mysore, it shall be deemed to have been in force till the date of coming into force of this Act.

8. Any Rules made, anything done and any action taken in exercise of any power conferred by or under the Defence of India Ordinance, as applied to Mysore (Act No. XXIII of 1939) shall be deemed to have been made done or taken in exercise of powers conferred by or under this Act as if this Act had commenced on the 4th day of September 1939

SCHEDULE.

List of modifications.

1. Save where the context otherwise requires :—

(*a*) references to the Central Government, a Provincial Government, the appropriate Government or Government shall be construed as references to the Government of His Highness the Maharaja ;

(*b*) references to the defence of British India shall be construed as including references to the defence of Mysore

(*c*) references to British India (otherwise than in the expression " defence of British India ") and to a Province of British India shall be construed as references to Mysore ; and

(*d*) references to matters in an Act of the Central Legislature of British India shall be construed :—

(i) where there is no corresponding Mysore Act, then as if those matters applied to Mysore, and

(ii) where there is a corresponding Mysore Act, then as if the references were to corresponding matters, if any, of the Mysore Act.

2. (1) Clauses (*a*) and (*b*) of sub-section (2) of section 1 of the said Act shall be omitted.

(2) For sub-section (3) of section 1 of the said Act, the following sub-section shall be substituted, namely :—

"(3) It shall come into force at once : Provided that the provisions of Chapter III shall not come into force until such date as the Government of His Highness the Maharaja may, by notification in the official Gazette, appoint in this behalf."

3. (1) In clause (iii) of sub-section (2) of section 2 of the said Act, after the words "His Majesty" the words "or His Highness the Maharaja" shall be added.

(2) In clause (v) of sub-section (2) of section 2 of the said Act, after the words "His Majesty's" where it occurs for the second time, the words "or His Highness's" shall be added.

4. In sub-section (1) of section 5 of the said Act, after the words "His Majesty" where it occurs for the first time, the words "or His Highness" shall be added.

5. For sub-clause (e) of sub-section (4) of section 6 of the said Act the following shall be substituted, namely,—

"(*e*) sections 9, 14, 15 and 20 and sub-section (2) of section 19 had been omitted ; and"

6. For section 8 of the said Act the following section shall be substituted, namely,—

"8. The Government of His Highness the Maharaja may, for the whole or any part of Mysore, constitute Special Tribunals consisting of one or more members."

7. Any reference to forces of His Majesty shall be deemed to include reference to State Forces.

8. For sub-section (3) of section 6 of the Ordinance, the following sub-sections shall be substituted, namely,—

"(3) The Mysore Newspapers Act, 1908, shall have effect as if,—

(*a*) in section 4, the following had been inserted a sub-section (2) renumbering the present section as sub section (1) thereof:—

> Without prejudice to the exercise of the power conferred in sub-section (1) of this section on the Government, whoever makes, sells distributes, publishes, or publicly exhibits or keeps for sale, distribution or publication any such newspaper or other printed work as aforesaid, shall be punishable with imprisonment which may extend to six months or with fine or with both. Notwithstanding anything contained in the Code of Criminal Procedure 1904, any offence punishable under this sub section or any abetment thereof shall be cognizable,"

(*b*) in sub-section (2) of section 6, the following had been inserted after the words, "British India namely—

> " and no newspaper or other printed work containing any words, signs or visible representation which directly or indirectly convey any 'confidential information,' any 'information likely to assist the enemy' or any 'prejudicial report' as defined in the rules made under the Defence of India Ordinance, 1939, as applied to Mysore, or are calculated to instigate the contravention of any of those rules,"

(*c*) in sub-clause (ii) of section 7, the words "clauses (a) and (b) of" had been omitted;

(*d*) in section 8, after the word "photography" the following words had been inserted, namely, "and any other process by which documents are produced or multiplied."

(3-A) Act No. XXV of 1867 (the Press and Registration of Books Act, 1867), as applied to Mysore, shall have effect as if,—

(i) in section 1 thereof the following definitions had been inserted, namely—

> "'editor' means the person who controls the selection of the matter that is published in a newspaper:" and

" 'newspaper' means any printed periodical work containing public news or comments on public news:";

(ii) in section 5 thereof, the following clause had been inserted after clause (1), namely—

"(1-a) every copy of every such newspaper shall contain the name of the person who is the editor thereof printed clearly on such copy as the name of the editor of such newspaper";

(iii) in section 7 thereof, —

(*a*) after the words "the custody of such declarations" the words, "or, in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor",

(*b*) after the words "to such declaration" the words "or printed on such newspaper, as the case may be" and

(*c*) after the words "in the declaration" the words "or the editor of every portion of that issue of the newspaper of which a copy is produced"

had been inserted;

(iv) in section 15 thereof, after the words "whoever shall" in the two places where they occur, the word "edit" and after the words "shall cause to be" the word "edited" had been inserted;

(v) after section 11 thereof, the following sections had been inserted, namely—

"11-A. The printer of every newspaper in Mysore shall deliver at such place and to such officer as the Government may, by notification in the official Gazette direct and free of expense to the Government, two copies of each issue of such newspaper as soon as it is published.

11-B. If any printer of any newspaper published in Mysore neglects to deliver copies of the same in compliance with section 11-A, he shall on the complaint of the officer to whom copies should have been delivered or of any person authorised by that officer in this behalf, be punishable, on conviction by a magistrate having jurisdiction in the place where the newspaper was printed, with fine which may extend to fifty rupees for every default."'

MIRZA M. ISMAIL,

Dewan.

THE DEFENCE OF INDIA ACT, 1939

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ACT NO. XXXV OF 1939.

[PASSED BY THE INDIAN LEGSILATURE.]

(Received the assent) of the Governor General on the 29th September 1939.)

An Act to provide for special measures to ensure the public safety and interest and the defence of British India and for the trial of certain offences.

WHEREAS an emergency has arisen which renders it necessary to provide for special measures to ensure the public safety and interest and the defence of British India and for the trial of certain offences;

AND WHEREAS the Governor General in his discretion has declared by Proclamation under sub-section (1) of section 102 of the Government of India Act, 1935, that a grave emergency exists whereby the security of India is threatened by war; 26 Geo. 5

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (*1*) This Act may be called the Defence of India Act, 1939. Short title, extent, commencement and duration.

(*2*) It extends to the whole of British India, and it applies also—

(*a*) to British subjects and servants of the Crown in any part of India;

(*b*) to British subjects who are domiciled in any part of India wherever they may be;

(*c*) in respect of the regulation and discipline of any naval, military or air force raised in British India to members of, and persons attached to, employed with, or following, that force, wherever they may be; and

(*d*) to, and to persons on, ships and aircraft registered in British India wherever they may be.

(3) This section shall come into force at once, and the remaining provisions of this Act shall come into force in such areas and on such date or dates as the Central Government may, by notification in the official Gazette, appoint.

(4) It shall be in force during the continuance of the present war and for a period of six months thereafter.

CHAPTER II.

EMERGENCY POWERS.

Powers to make rules.

2. (1) The Central Government may, by notification in the official Gazette, make such rules as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, or may empower any authority to make orders providing for, all or any of the following matters, namely:—

(i) ensuring the safety and welfare of His Majesty's forces, ships and aircraft, and preventing the prosecution of any purpose likely to prejudice the operations of His Majesty's forces or the forces of His Majesty's allies;

(ii) prohibiting anything likely to prejudice the training, discipline or health of His Majesty's forces;

(iii) preventing any attempt to tamper with the loyalty of persons in, or to dissuade (otherwise than with advice given in good faith to the person dissuaded for his benefit or that of any member of his family or any of his dependents) persons from entering, the service of His Majesty;

(iv) preventing anything likely to assist the enemy or to prejudice the successful conduct of war, including—

(a) communications with the enemy or agents of the enemy,

(*b*) acquisition, possession without lawful authority or excuse and publication of information likely to assist the enemy,

(*c*) contribution to, participation in, or assistance in, the floating of loans raised by or on behalf of the enemy, and

(*d*) advance of money to, or contracts or commercial dealings with, the enemy, enemy subjects or persons residing, carrying on business, or being, in enemy territory;

(v) preventing the spreading without lawful authority or excuse of false reports or the prosecution of any purpose likely to cause disaffection or alarm, or to prejudice His Majesty's relations with foreign powers, or to promote feelings of enmity and hatred between different classes of His Majesty's subjects;

Explanation.—To point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of His Majesty's subjects does not amount to promoting such feelings within the meaning of this clause.

(vi) requiring the publication of news and information;

(vii) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient, and the removal of persons from such areas;

(viii) requiring any person or class of persons to comply with a scheme of defence;

(ix) ensuring the safety of ports, dockyards, lighthouses, lightships, ærodromes, railways, telegraphs, post offices, signalling apparatus and all other means of communication, sources of water-supply, works for the supply of water, gas or electricity and any other place or thing the protection of which is necessary for the defence of British India;

(x) the apprehension and detention in custody of any person reasonably suspected of being of hostile origin or of having acted, acting or

being about to act, in a manner prejudicial to the public safety or interest or to the defence of British India, the prohibition of such person from entering or residing or remaining in any area, and the compelling of such person to reside and remain in any area, or to do, or abstain from doing, anything;

(xi) the control of persons entering, departing from, or travelling in, British India, and of foreigners residing or being in British India;

(xii) prohibiting or regulating traffic, and the use of vessels, buoys, lights and signals, in ports and territorial, tidal and inland waters;

(xiii) restricting the charter of foreign vessels;

(xiv) regulating the structure and equipment of vessels used or likely to be used by the Central Government, for the purpose of ensuring the safety thereof and of persons therein;

(xv) regulating work in dockyards and shipyards in respect of the construction and repairs of vessels;

(xvi) prohibiting or regulating the sailings of vessels from ports, traffic at aerodromes and the movement of aircraft, and traffic on railways, tramways and roads, and reserving, and requiring to be adapted, for the use of the Central Government, all or any accommodation in vessels, aircraft, railways, tramways or road vehicles for the carriage of persons, animals or goods;

xvii) impressment of vessels, aircraft, vehicles and animals for transport;

prohibiting or regulating the use of postal telegraph or telephonic services, including the taking possession of such services and the delaying, seizing, intercepting or interrupting of postal articles or telegraphic or telephonic messages;

regulating the delivery otherwise than by postal or telegraphic service of postal articles and telegrams;

the control of any trade or industry for the purpose of regulating or increasing the supply of and the obtaining of information with

regard to, articles or things of any description whatsoever which can be used in connection with the conduct of war or for maintaining supplies and services essential to the life of the community;

(xxi) ensuring the ownership and control of mines by British subjects;

(xxii) controlling the use or disposal of, or dealings in, coin, bullion, securities or foreign exchange;

(xxiii) the control of any road or pathway, waterway, ferry or bridge, river, canal or other source of water-supply;

(xxiv) the requisitioning of any property, movable or immovable, including the taking possession thereof and the issue of any orders in respect thereof;

(xxv) prohibiting or regulating the possession, use or disposal of—

(*a*) explosives, inflammable substances, arms and ammunitions of war,

(*b*) vessels,

(*c*) wireless telegraphic apparatus,

(*d*) aircraft, and

(*e*) photographic and signalling apparatus and any means of recording information;

(xxvi) applying the provisions of the Sea Customs Act, 1878, and in particular section 19 thereof, to the prohibition or restriction of the import or export of goods to a particular person or a particular class of persons;

(xxvii) prohibiting or regulating the bringing into, or taking out of British India and the possession, use or transmission of ciphers and other secret means of communicating information;

(xxviii) prohibiting or regulating the publication of inventions and designs;

(xxix) preventing the disclosure of official secrets;

(xxx) prohibiting or regulating meetings, assemblies, fairs and processions;

(xxxi) preventing or controlling any use, calculated to prejudice the public safety, the maintenance of public order, the defence of British India or the prosecution of war, of uniforms, flags and insignia and of anything similar thereto;

(xxxii) ensuring the accuracy of any report or declaration legally required of any person;

(xxxiii) preventing the unauthorised change of names;

(xxxiv) preventing anything likely to cause misapprehension in respect of the identity of any official person, official document or official property or in respect of the identity of any person, document or property purporting to be or resembling, an official person, official document or official property

(xxxv) entry into, and search of, any place reasonably suspected of being used for any purpose prejudicial to the public safety or interest, to the defence of British India or to the efficient prosecution of war, and for the seizure and disposal of anything found there and reasonably suspected of being used for such purpose.

The rules made under sub-section (*1*) may further—

(i) provide for the arrest and trial of persons contravening any of the rules

(ii) provide that any contravention of, or any attempt to contravene, and any abetment of, or attempt to abet, the contravention of any of the provisions of the rules, or any order issued under any such provision, shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both;

provide for the seizure, detention and forfeiture of any property in respect of which such contravention, attempt or abetment as is referred to in the preceding clause has been committed

confer power and impose duties—

a) upon the Central Government or officers and authorities of the Central Government as respects any matter, notwithstanding that that matter is one in respect of which the Provincial Legislature also has power to make laws, and

(*b*) upon any Provincial Government or officers and authorities of any Provincial Government as respects any matter notwithstanding that that matter is one in respect of which the Provincial Legislature has no power to make laws;

(v) prescribe the duties and powers of public servants and other persons as regards preventing the contravention of, or securing the observance of, the rules;

(vi) provide for preventing obstruction and deception of, and disobedience to any person acting, and interference with any notice issued, in pursuance of the rules;

(vii) prohibit attempts by any person to screen from punishment any one, other than the husband or wife of such person, contravening any of the rules;

(viii) empower or direct any authority to take such action as may be specified in the rules or as may seem necessary to such authority for the purpose of ensuring the public safety or interest or the defence of British India;

(ix) provide for charging fees in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the rules.

(*4*) The Central Government may by order direct any power or duty which by rule under sub-section s conferred or imposed upon the Central Government in such circumstances and under such conditions, if any, as may be specified in the direction be exercised or discharged—

(*a*) by any officer or authority subordinate to the Central Government, or

(*b*) whether or not the power or duty relates to a matter with respect to which a Provincial Legislature has power to make laws, by any Provincial Government or by any officer or authority subordinate to such Government, or

(*c*) by any other authority.

(5) A Provincial Government may by order direct that any power or duty which by rule made under

sub-section (*1*) is conferred or imposed on the Provincial Government, or which, being by such rule conferred or imposed on the Central Government, has been directed under sub-section (*4*) to be exercised or discharged by the Provincial Government, shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority, not being an officer or authority subordinate to the Central Government.

Effect of rules, etc., inconsistent with other enactments.

3. Any rule made under section 2, and any order made under any such rule, shall have effect notwithstanding anything inconsistent theirwith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Special powers to control civilian personnel employed in connexion with His Majesty' forces.

4. The Central Government may, by notification in the official Gazette, direct by general or special order that any persons who, not being members of His Majesty's forces, are attached to, or employed with, or following, those forces, shall be subject to naval, military or air force law, and thereupon such persons shall be subject to discipline, and liable to punishment for offences, under the Indian Navy (Discipline) Act, 1934, the Indian Army Act, 1911, or the Indian Air Force Act, 1932, as the case may require, as if they were included in such class of persons subject to any of those Acts as may be specified in the notification.

XXXIV of 1934.
VIII of 1911.
XIV of 1932.

Enhanced penalties.

5. (1) If any person, with intent to wage war against His Majesty or to assist any State at war with His Majesty, contravenes any provision of the rules made under section 2 or any order issued under any such rule, he shall be punishable with death, or transportation for life, or imprisonment for a term which may extend to ten years, and shall also be liable to fine.

(2) If any person—

XXII of 1934.

(*a*) contravenes any such provision of, or any such rule or order made under, the Indian Aircraft Act, 1934, as may be notified in this behalf by the Central Government, or

XI of 1878.
IV of 1884.
VI of 1908.

(*b*) in any area notified in this behalf by a Provincial Government, contravenes any such provision of, or any such rule made under, the Indian Arms Act, 1878, the Indian Explosives Act, 1884, or the Explosive

Substances Act, 1908, as may be notified in this behalf by the Provincial Government,

he shall, notwithstanding anything contained in any of the aforesaid Acts or rules made thereunder, be punishable with imprisonment for a term which may extend to five years, or, if his intention is to assist any State at war with His Majesty or to wage war against His Majesty, with death, transportation for life, or imprisonment for a term which may extend to ten years, and shall in either case also be liable to fine.

(3) For the purposes of this section, any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention of, a provision of any law, rule or order, shall be deemed to have contravened that provision.

Temporary amendments of Act. 1 and 2 Geo. 5, c. 20.

6. During the continuance of this Act,—

(1) section 1 of the Geneva Convention Act, 1911, shall have effect in British India as if, in sub-section (*1*) thereof, for the words "shall be liable on summary conviction to a fine not exceeding ten pounds", the words "shall be punishable with imprisonment for a term which may extend to six months and shall also be liable to a fine" had been substituted;

(2) section 5 of the Indian Official Secrets Act, 1923, XIX shall have effect as if—

(*a*) In sub-section (*1*) thereof, after the words "in his possession or control" the words "any information likely to assist the enemy, as defined in the rules made under the Defence of India Act, 1939, or" had been inserted, and after the words "in such a place" the words "or which relates to, or is used in, a protected area, asdefined in the rules made under the Defence of India Act, 1939, or relates to anything insuch an area," had been inserted; and

(*b*) for sub-section (4) thereof, the following sub-section had been substituted, namely:—

"(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to five years, or, if such offence is committed with intent to assist any State at war with His Majesty, or

to wage war against His Majesty, with dea
or transportation for life, or imprisonme
for a term which may extend to ten years, a
shall in either case also be liable to fine." ;

(3) the Indian Press (Emergency Powers) Act, 19
shall have effect as if in sub-section (1) of section 4 there
after clause (*b*), the following word and clause had be
inserted, namely :–

(*bb*) directly or indirectly convey any 'confident
information', any 'information likely to ass
the enemy' or any 'prejudicial report',
defined in the rules made under the Defen
of India Act, 1939, or are calculated to ins
gate the contravention of any of those rules

(4) the Indian Aircraft Act, 1934, shall have effe
as if—

(*a*) at the end of clause (*r*) of sub-section (2)
section 5 the following words had been inserted, namely:

"including the taking of steps necessary to secure
compliance with, or to prevent contravention
of, the rules regulating such matters, or, where
any such rule has been contravened, to rectify
or to enable proceedings to be taken in respect
of, such contravention"

(*b*) in clause (*b*) of sub-section (1) of section 8, for
the words, brackets, letters and figures "clause (*h*) or
clause (*i*) of sub-section (2) of section 5", the words,
brackets, letters and figures "clauses (*d*), (*e*), (*h*), (*i*),
(*k*) or (*l*) of sub-section (2) of section 5, or the commis-
sion of an offence punishable under section 11," had been
substituted

(*c*) in section 11, after the words "in the air" the
words "or in such a manner as to interfere with any of
His Majesty's forces, ships or aircraft" had been inserted

in section 13, for the words, brackets, figures
and letters "clause (*i*) or clause (*l*) of sub-section (2) of
section 5", the words, brackets, figures and letters "clauses
(*c*), (*d*), (*e*), (*h*), (*i*), (*j*), (*k*) or (*l*) of sub-section (2) of
section 5, or punishable under section 11", had been sub-
stituted; and

(*e*) section 14 had been omitted; and

(5) the Indian Navy (Discipline) Act, 1934, shall have effect as if for section 90 of the Naval Discipline Act as set forth in the First Schedule to the first named Act the following section had been substituted, namely :— XXXIV of 1934.

"90. (*1*) If any person who would not otherwise be subject to this Act enters into an engagement with the Central Government to serve His Majesty—

(*a*) in a particular ship, or

(*b*) in such particular ship or in such ships as the Officer Commanding the Indian Navy, or any officer empowered in this behalf by the Officer Commanding the Indian Navy, may from time to time determine,

and agrees to become subject to this Act upon entering into the engagement, that person shall, so long as the engagement remains in force, and notwithstanding that for the time being he may not be serving in any ship, be subject to this Act, and the provisions of this Act shall apply in relation to that person, as if, while subject to this Act, he belonged to His Majesty's navy and were borne on the books of one of His Majesty's ships in commission.

(*2*) The Central Government may by order direct that, subject to such exceptions as may in particular cases be made by or on behalf of the Officer Commanding the Indian Navy, persons of any such class as may be specified in the order shall, while subject to this Act by virtue of this section, be deemed to be officers or petty officers, as the case may be, for the purposes of this Act or of such provisions of this Act as may be so specified; and any such order may be varied or revoked by a subsequent order."

Saving and temporary amendment of Act VIII of 1938. VIII of 1938.

7. (*1*) Notwithstanding anything contained in the Indian Tea Control Act, 1938, the Central Government may appoint any person to be an additional member of, and to act as Chairman of, the Indian Tea Licensing Committee during the continuance of this Act, and on such appointment being made and until this Act, ceases to be in force, the Chairman of the said Committee elected under section 5 of that Act shall cease to exercise the functions of Chairman.

(*2*) If in pursuance of any scheme for the control of import of Indian tea into the United Kingdom, the Central Government considers it necessary or expedient

so to do, it may by order direct the Indian Tea Licensing Committee to apportion the requirement of the United Kingdom among the tea estates in accordance with such principles as may be laid down in the order, and the said Committee shall comply with such order.

(3) If at any time during the continuance of this Act, the agreement referred to in the preamble to the Indian Tea Control Act, 1938, is determined or otherwise ceases to be valid as between the parties thereto, the provisions of that Act shall, notwithstanding the said determination or invalidity of the agreement, continue in force:

Provided that nothing in this sub-section shall be construed as continuing the Indian Tea Control Act, 1938 in force after the 31st day of March, 1943.

CHAPTER III.

SPECIAL TRIBUNALS.

Constitution of Special Tribunals.

8. (1) The Provincial Government may for the whole or any part of the Province constitute Special Tribunals which shall consist of three members appointed by the Provincial Government.

(2) No person shall be appointed as a member of a Special Tribunal unless he—

(a) is qualified under sub-section (3) of section 220 of the Government of India Act, 1935, for appointment as a Judge of a High Court; or

(b) has for a total period of not less than three years exercised, whether continuously or not, the powers under the Code of Criminal Procedure, 1898 (hereafter in this Chapter referred to as the Code) of any one or more of the following, namely:—

(i) Sessions Judge, Additional Sessions Judge, Chief Presidency Magistrate, Additional Chief Presidency Magistrate,

(ii) District Magistrate, Additional District Magistrate.

(3) At least one member of a Special Tribunal shall be qualified for appointment thereto under clause (a) of sub-section (2), and where only one member is so qualified

under that clause, at least one other member shall be qualified for appointment under clause (b) of that sub-section by virtue of having exercised powers exclusive of those specified in sub-clause (ii) of the said clause (b).

9. The Provincial Government may, by general or special order, direct that a Special Tribunal shall try any offence—

(*a*) under any rule made under section 2, or

(*b*) punishable with death, transportation or imprisonment for a term which may extend to seven years,

triable by any Court having jurisdiction within the local limits of the jurisdiction of the Special Tribunal, and may in any such order direct the transfer to the Special Tribunal of any particular case, from any other Special Tribunal or any other Criminal Court not being a High Court.

10. (*1*) A Special Tribunal may take cognizance of offences without the accused being committed to it for trial.

(*2*) Save in cases of trials of offences punishable with death or transportation for life, it shall not be necessary in any trial for a Special Tribunal to take down the evidence at length in writing, but the Special Tribunal shall cause a memorandum of the substance of what each witness deposes to be taken down in the English language and such memorandum shall be signed by a member of the Special Tribunal and shall form part of the record.

(*3*) A Special Tribunal shall not be bound to adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice.

(*4*) A Special Tribunal shall not, merely by reason of a change in its members, be bound to recall and rehear any witness who has given evidence, and it may act on the evidence already recorded by or produced before it.

(*5*) After an accused person has once appeared before it, a Special Tribunal may try him in his absence if, in its opinion, his absence has been brought about by the accused himself for the purpose of impeding the course of justice, or if the behaviour of the accused in Court has been such as, in the opinion of the Special Tribunal, to impede the course of justice.

(*6*) In the event of any difference of opinion among the members of a Special Tribunal, the opinion of the majority shall prevail.

(7) The Provincial Government may, by notification in the official Gazette, make rules providing for—

(i) the times and places at which Special Tribunals may sit; and

(ii) the procedure to be adopted in the event of any member of a Special Tribunal being prevented from attending throughout the trial of any accused person.

(8) A Special Tribunal shall, in all matters in respect to which no procedure has been prescribed by this Act or by rules made thereunder, follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates.

Exclusion of public from proceedings of Special Tribunals.

11. In addition, and without prejudice, to any powers which a Special Tribunal may possess by virtue of any law for the time being in force to order the exclusion of the public from any proceedings, if at any stage in the course of a trial of any person before a Special Tribunal application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the trial would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the Special Tribunal may make an order to that effect, but the passing of sentence shall in any case take place in public.

Powers of Special Tribunal

12. A Special Tribunal shall have all the powers conferred by the Code on a Court of Session exercising original jurisdiction.

Sentences of Special Tribunals.

13. (1) A Special Tribunal may pass any sentence authorised by law.

(2) A person sentenced by a Special Tribunal—

(a) to death or transportation for life, or

XIX of 1923.

(b) to imprisonment for a term extending to ten years under section 5 of this Act or under sub-section (4) of section 5 of the Indian Official Secrets Act, 1923, as amended by section 6 of this Act—

shall have a right of appeal to the High Court within whose jurisdiction the sentence has been passed, but save as aforesaid and notwithstanding the provisions of the Code, or of any other law for the time being in force, or of

any thing having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of a Special Tribunal, and no Court shall have authority to revise such order or sentence, or to transfer any case from a Special Tribunal, or to make any order under section 491 of the Code, or have any jurisdiction of any kind in respect of any proceedings of a Special Tribunal.

(*3*) The powers conferred upon the Provincial Government and the Governor General by Chapter XXIX of the Code shall apply in respect of a person sentenced by a Special Tribunal.

CHAPTER IV.

SUPPLEMENTAL.

Jurisdiction of ordinary Courts.

14. Save as otherwise expressly provided by or under this Act, the ordinary criminal and civil Courts shall continue to exercise jurisdiction.

Ordinary avocations of life to be interfered with as little as possible.

15. Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of British India.

Savings as to orders.

16. (*1*) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

(*2*) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a Court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority. I of 1872.

Protection of action taken under the Act.

17. (*1*) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(*2*) Save as otherwise expressly provided under this Act, no suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

18. Every provision of law for the time being in force which gives protection, whether specifically or othewise,

Protection from prosecution, etc., of members of military and police forces of Indian States while serving His Majesty.

to members of His Majesty's military forces or of the police forces in British India from any prosecution or other legal proceedings or from any other liability shall apply also to members of the military or police forces respectively of any Indian State, while attached to, operating with or assisting any of His Majesty's military forces or any police force in British India.

Compensation to be paid in accordance with certain principles for compulsory acquisition of immovable property, etc. 26 Geo. 5, c. 2.

19. (*1*) Where by or under any rule made under this Act any action is taken of the nature described in sub-section (2) of section 299 of the Government of India Act, 1935, there shall be paid compensation, the amount of which shall be determined in the manner, and in accordance with the principles, hereinafter set out, that is to say :—

(*a*) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement.

(*b*) Where no such agreement can be reached, the Central Government shall appoint as arbitrator a person qualified under sub-section (3) of section 220 of the abovementioned Act for appointment as a Judge of a High Court.

(*c*) The Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property acquired, to assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose.

(*d*) At the commencement of the proceedings before the arbitrator, the Central Goverment and the person to be compensated shall state what in their respective opinions is a fair amount of compensation.

(*e*) The arbitrator in making his award shall have regard to-

(*i*) the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894, so far as the same can be made applicable ; and

(*ii*) whether the acquisition is of a permanent or temporary character.

f) An appeal shall High Court against an award of an arbitrator except in cases

where the amount thereof does not exceed an amount prescribed in this behalf by rule made by the Central Government.

(*g*) Save as provided in this section and in any rules made thereunder, nothing in any law for the time being in force shall apply to arbitrations under this section.

(*2*) The Central Government may make rules for ; purpose of carrying into effect the provisions of this ;tion.

(*3*) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(*a*) the procedure to be followed in arbitrations under this section;

(*b*) the principles to be followed in apportioning the cost of proceedings before the arbitrator and on appeal;

(*c*) the maximum amount of an award against which no appeal shall lie.

20. In this Act, unless there is anything repugnant in the subject or context, the expression "Provincial Government" means, in relation to a Chief Commissioner's Province, the Chief Commissioner.

21. The Defence of India Ordinance, 1939, is hereby repealed; and any rules made, anything done and any action taken in exercise of any power conferred by or under the said Ordinance shall be deemed to have been made, done or taken in exercise of powers conferred by or under this Act as if this Act had commenced on the 3rd day of September, 1939.